ADDENDUM

61ST LEGISLATURE

Helena, Montana
2009

Senate Chambers
State Capitol

BILLS AND JOURNALS: 5/4/2009

Correctly enrolled: **SB 263**, **SB 476**.
Examined by the sponsor and found to be correct: **SB 257**, **SB 263**, **SB 403, SB 439**, **SB 476**, **SB 489**.
Signed by the Speaker at 9:00 a.m., April 30, 2009: **SB 257**, **SB 403**, **SB 439**, **SB 489**.
Signed by the President at 3:30 p.m., April 28, 2009: **SB 257**, **SB 403**, **SB 439**, **SB 489**.
Signed by the Secretary of the Senate at 9:05 a.m., April 27, 2009: **SB 257**, **SB 403**, **SB 439**, **SB 489**.
Signed by the Speaker at 9:00 a.m., April 30, 2009: **SB 498**.
Signed by the President at 3:20 p.m., April 29, 2009: **SB 498**.
Signed by the Secretary of the Senate at 9:05 a.m., April 27, 2009: **SB 498**.
Signed by the Speaker at 9:00 a.m., April 30, 2009: **SB 476**.
Signed by the President at 11:30 a.m., April 29, 2009: **SB 476**.
Signed by the Secretary of the Senate at 11:15 a.m., April 29, 2009: **SB 476**.
Signed by the Speaker at 9:00 a.m., April 30, 2009: **SB 263**.
Signed by the President at 1:20 p.m., April 29, 2009: **SB 263**.
Signed by the Secretary of the Senate at 10:45 a.m., April 29, 2009: **SB 263**.
Signed by the Speaker at 9:00 a.m., April 30, 2009: **SB 322**, **SB 418**.
Signed by the President at 10:15 a.m., April 28, 2009: **SB 322**, **SB 418**.
Signed by the Secretary of the Senate at 9:05 a.m., April 28, 2009: **SB 322**, **SB 418**.
Signed by the Speaker at 9:00 a.m., April 30, 2009: **SB 65**, **SB 171**, **SB 503**, **SB 507**, **SB 510**.
Signed by the President at 1:30 p.m., April 29, 2009: **SB 65**, **SB 171**, **SB 503**, **SB 507**, **SB 510**.
Signed by the Secretary of the Senate at 3:05 p.m., April 28, 2009: **SB 65**, **SB 171**, **SB 503**, **SB 507**, **SB 510**.
Signed by the Speaker at 4:00 p.m., April 27, 2009: **SB 119**, **SB 235**, **SB 290**, **SB 400**, **SB 446**, **SB 465**.
Signed by the President at 3:30 p.m., April 27, 2009: **SB 119**, **SB 235**, **SB 290**, **SB 400**, **SB 446**, **SB 465**.
Signed by the Secretary of the Senate at 2:40 p.m., April 27, 2009: **SB 119**, **SB 235**, **SB 290**, **SB 400**, **SB 446**, **SB 465**.
Delivered to the Governor for approval at 4:00 p.m., April 28, 2009: **SB 119**, **SB 235**, **SB 290**, **SB 400**, **SB 446**, **SB 465**.
Delivered to the Governor for approval at 11:17 a.m., April 30, 2009: **SB 65**, **SB 171**, **SB 257**, **SB 263**, **SB 322**, **SB 403**, **SB 418**, **SB 439**, **SB 476**, **SB 489**, **SB 498**, **SB 503**, **SB 507**, **SB 510**.

COMMUNICATIONS AND PETITIONS

Governor Brian Schweitzer
State Capitol
Helena, MT 59601

Dear Governor Schweitzer:

Your amendatory veto of Senate Bill 371 was not concurred in by the legislature.

Pursuant to Joint Rule 40-230(4)(c), I am returning the bill for your further consideration.

Sincerely,

Marilyn Miller
Secretary

Governor Brian Schweitzer
State Capitol
Helena, MT 59601

Dear Governor Schweitzer:

Your amendatory veto of Senate Bill 360 was not concurred in by the legislature.

Pursuant to Joint Rule 40-230(4)(c), I am returning the bill for your further consideration.

Sincerely,

Marilyn Miller
Secretary

MESSAGES FROM THE GOVERNOR

April 29, 2009

The Honorable Linda McCulloch
Secretary of State
State Capitol
Helena, MT 59620

Dear Secretary McCulloch:

In accordance with the power vested in me as Governor by the Constitution and the laws of the State of Montana, I hereby veto Senate Bill 249, "AN ACT REQUIRING THE DEPARTMENT OF JUSTICE TO ISSUE A LIMITED-USE DRIVER'S LICENSE, UNDER CERTAIN CIRCUMSTANCES, TO A PERSON WHOSE LICENSE HAS BEEN SUSPENDED OR REVOKED BY ANOTHER STATE; AMENDING SECTIONS 61-5-103 AND 61-5-105, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

Senate Bill 249, sponsored by Senator Curtiss, creates an exception to current law, which prohibits the Department of Justice from issuing a driver's license to an individual whose license or driving privilege is currently suspended, revoked, or canceled by another state, as indicated by an "ineligible" status on the national driver register.

My objection to the bill is that I do not believe it is appropriate to carve out a specific exception to the longstanding public policy of this state that the decision by a sister state to suspend, revoke, or cancel an individual's drivers' license will be respected by Montana.

Sincerely,

BRIAN SCHWEITZER
GOVERNOR

April 29, 2009

The Honorable Linda McCulloch
Secretary of State
State Capitol
Helena, MT 59620

Dear Secretary McCulloch:

In accordance with the power vested in me as Governor by the Constitution and the laws of the State of Montana, I hereby veto Senate Bill 291, "**AN ACT ESTABLISHING THE MONTANA RAILROAD DEVELOPMENT AUTHORITY; DEFINING TERMS; ESTABLISHING AUTHORITY MEMBERSHIP; AUTHORIZING THE APPOINTMENT OF AUTHORITY MEMBERS; CLARIFYING THE PUBLIC SERVICE COMMISSION'S AUTHORITY; REQUIRING THAT THE LEGISLATURE APPROVE THE AUTHORITY'S ACQUISITION OF A RAILROAD FACILITY; PROVIDING THE AUTHORITY WITH CERTAIN POWERS; PROVIDING THE AUTHORITY WITH RULEMAKING AUTHORITY THAT ALLOWS IT TO ISSUE REVENUE BONDS; CLASSIFYING CERTAIN AUTHORITY RAILROAD FACILITY PROPERTY AS CLASS NINE PROPERTY FOR PROPERTY TAX PURPOSES; CLASSIFYING CERTAIN AUTHORITY RAILROAD FACILITY PROPERTY AS CLASS TWELVE PROPERTY FOR PROPERTY TAX PURPOSES; PROVIDING THAT AUTHORITY FACILITIES ARE SUBJECT TO THE PRIVILEGE TAX; REQUIRING THAT THE AUTHORITY REPAY STATE APPROPRIATIONS; REQUIRING THE DEPARTMENT OF TRANSPORTATION TO CONSULT WITH THE AUTHORITY IN ADMINISTERING THE MONTANA ESSENTIAL FREIGHT RAIL ACT; ELIMINATING THE RAIL SERVICE COMPETITION COUNCIL; AMENDING SECTIONS . . . . ; REPEALING SECTION 2-15-2511, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.**"

Senate Bill 291 replaces the existing Rail Service Competition Council ("RSCC") with a new Montana Railroad Development Authority, ostensibly for the purpose of increasing rail competition. I do not believe it would create competition. Rather, I believe it would expand unneeded bureaucracy and increase the possibility that public money will be targeted to build infrastructure that should be rightly financed by the private sector.

The existing RSCC has been doing a commendable job of analyzing the factors involved in the lack of railroad competition in Montana. The RSCC also has done a very good job of informing policymakers, including the Legislature, of rail competition issues and possible solutions for moving forward in this difficult but important area.

The State should be concerned about the potential use of public money to build railroad infrastructure to serve private railroads, which by necessity would be connected with existing rail lines, with no guarantee of increased competition or benefit to Montana shippers. The concern is a real one. Lawmakers in Washington, D.C. have recently seen a major push by Class 1 Railroads to get Congress to allocate federal money to build infrastrucure to serve private railroads. While the average Montana taxpayer has no qualms with a private railroad making a fair profit, that taxpayer also agrees that it makes no sense to use public money to subsidize a situation that is fundamentally unfair to Montana shippers.

It is also worth noting that the need for rail spurs for local economic development, for industrial parks, or for other projects can currently be met by local port authorities. These authorities possess bonding capabilities that allow them to finance carefully considered and targeted projects to meet local needs. A statewide authority would add very little to what is rightly a local function.

Due to the unnecessary growth in bureaucracy proposed by this legislation, the creation of an authority that could lead to the use of funds without benefit to Montana taxpayers and shippers - or worse yet, the misuse of public funds, the fact that the RSCC currently has acted effectively in raising important rail competition issues, and the fact that local port authorities can fulfill most of the functions brought forth in this bill under existing law, I ask for your support in sustaining my veto of Senate Bill 291.

Sincerely,

BRIAN SCHWEITZER
GOVERNOR

April 29, 2009

The Honorable Linda McCulloch
Secretary of State
State Capitol
Helena, MT 59620

Dear Secretary McCulloch:

In accordance with the power vested in me as Governor by the Constitution and the laws of the State of Montana, I hereby veto Senate Bill 349, "**AN ACT CLARIFYING THAT CERTAIN CONFIDENTIAL OR PROPRIETARY INFORMATION SUBMITTED AS PART OF THE PUBLIC BIDDING OR PUBLIC CONTRACTING PROCESS FOR CERTAIN PUBLIC BUILDING AND PUBLIC HIGHWAY, ROAD, AND SIMILAR TRANSPORTATION PROJECTS IS NOT PUBLIC INFORMATION OPEN TO PUBLIC INSPECTION; AND AMENDING SECTIONS 18-2-503, 18-4-126, AND 60-2-137, MCA.**"

When I proposed Governor's amendments to Senate Bill 349, sponsored by Senator Tutvedt, I advised the Legislature of my concerns with the bill. I believed my amendments would have cured the deficiencies with the bill regarding its constitutionality and its conflict with existing Montana procurement laws. As is its right, the Legislature chose to reject my proposed amendments, so it should come as no surprise that I have chosen to veto the bill.

Senate Bill 349 was introduced to address a perceived problem that state agencies will treat protected information, such as trade secret information, submitted to state agencies under Montana's procurement laws, as though that information is public information. I say, "perceived," because I am unaware of any examples cited by the proponents of the bill that protected information has been improperly released. Senate Bill 349 amends Montana procurement and construction statutes administered by the Department of Administration and also amends design-build statutes under laws administered by the Department of Transportation.

As I stated in my message to the Legislature proposing amendments to the bill, my objection to Senate Bill 349 is twofold. First, it reverses the "*constitutional presumption* that all documents of every kind in the hands of public officials are amendable to inspection, regardless of legislation. . . ." *Great Falls Tribune v. Montana Public Service Commission*, 2003 MT 359, ¶ 54, *quoting Associated Press, Inc. v. Montana Department of Revenue*, 2000 MT 160, ¶ 85. Second, it conflicts with current procurement statutes under Title 18, chapter 4, MCA.

Regarding the constitutional presumption, the *Great Falls Tribune* decision set forth the proper procedure to be used by state agencies that have in their possession information considered to be confidential. Specifically, the court rejected any conclusory, generalized statements that information is subject to protection ("mere representations" not sufficient), and required parties to make a particularized showing, through the submission of a supporting affidavit, and agencies to make particularized findings related to the claim of confidentiality. The court also held that the

governmental agency had the "affirmative duty" to review the claim of the third party and make an "independent determination whether the records are in fact property rights which warrant due process protection. . . ." *Id.* at ¶¶ 55-57. The court concluded that if the government agency requires the filing or production of trade secrets or other confidential information, "the information's status as a trade secret or confidential proprietary information remains unchanged." *Id.* at ¶ 60.

My first concern with Senate Bill 349 is that the amendments to § 18-4-126, MCA, found in section 2 of the bill authorize a blanket presumption of confidentiality based on the conclusory identification of the information as trade secret information by the person submitting the information, and that this standard does not meet the detailed requirements set forth in *Great Falls Tribune*.

My second concern is that the bill conflicts with § 18-4-304, MCA (which is part of Montana's procurement code, and is not amended in Senate Bill 349), which provides that "proposal documents may be inspected by the public subject to [three specific limitations]": matters covered by the Uniform Trade Secrets Act, matters involving individual safety as determined by the Department of Administration, and other constitutional protections. The provisions contained in section 2 of Senate Bill 349 create unnecessary conflict with § 18-4-304, MCA.

As you consider whether to sustain my veto, you need to know that the Department of Administration already has in place procedures that follow the methodology endorsed by the Montana Supreme Court in the *Great Falls Tribune* decision to protect against the improper dissemination of non-public information by allowing parties submitting confidential, trade secret information in the procurement process to make a particularized showing of confidentiality by affidavit. The procedures can be found electronically at http://gsd.mt.gov/docs/Tradesecretaffidavit.doc. Please also be advised that Department of Transportation Director Jim Lynch has agreed to implement similar procedures within his agency to cover design-build and other highway contracts.

For the reasons above, I ask for your support in sustaining my veto of Senate Bill 349.

Sincerely,

BRIAN SCHWEITZER
GOVERNOR

April 29, 2009

The Honorable Linda McCulloch
Secretary of State
State Capitol
Helena, MT 59620

Dear Secretary McCulloch:

In accordance with the power vested in me as Governor by the Constitution and the laws of the State of Montana, I hereby veto Senate Bill 460, "**AN ACT PROVIDING FOR A FEDERAL ECONOMIC STIMULUS PROGRAM OVERSIGHT COMMISSION; PROVIDING FOR MEMBERS AND DUTIES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.**"

The Legislature has passed House Bill 645, the bill to appropriate approximately $880 million in federal stimulus funding for Montana. Federal stimulus funding equates to roughly 10% of the state's entire budget for the 2011 biennium. Senate Bill 460, sponsored by Senator Story, creates a special Economic Stimulus Program Oversight Commission to "oversee" the distribution and use of any federal economic stimulus program funds. My decision to

veto this bill is based on two primary factors.

First, I believe the creation of a new Commission is unnecessary and a waste of taxpayer money. Any legislative review of the expenditure of federal stimulus dollars can be accomplished equally effectively by existing legislative committees, such as the Legislative Finance Committee and the Legislative Audit Committee. As explained above, federal stimulus money comprises only about 10% of the entire state budget, and, as required by federal law, the vast majority of the federal stimulus dollars are appropriated to existing programs. It escapes me why an entire new Commission is necessary to oversee the expenditure of this money, which by and large is appropriated to existing programs.

Second, I object to particular duties of the Commission described in Senate Bill 460. Specifically, the bill provides that the Commission may establish a website to foster greater accountability and transparency. However, the American Recovery and Reinvestment Act ("ARRA"), itself, contains requirements for accountability and transparency, for which I, as Governor, and head of the executive branch, am accountable. Pursuant to the requirements of the ARRA, my administration has already created a website, and is investing in tools to enhance the website, which comport with federal law and guidance concerning transparency. The site can be found on the internet at http://recovery.mt.gov/default.mcpx. I believe a website created by the Commission would not only be confusing to the public but would be an unnecessary duplication of the required site that is already in existence. This, itself, would be a waste of taxpayer resources.

Similarly, Senate Bill 460 directs the Commission to "determine the transparency in bidding and the contracting process." A major feature of the ARRA is its strict requirements concerning transparency and accountability, and federal agencies will be monitoring Montana's compliance with those requirements. As stated, the executive has already begun complying through creation of the website referred to above. Indeed, if Montana does not comply with federal transparency requirements, the state runs the risk of losing these federal dollars. Additionally, Montana procurement laws already provide standards related to the transparency of state contracts. It is unclear what benefit would be provided by creating a Commission to "determine" these matters, where there are numerous safeguards already in place to assure transparency in the spending of the federal stimulus money.

Finally, I find it inappropriate to falsely empower a Commission to determine the "adequacy of public notice and opportunity for comment and input" with respect to the spending of federal stimulus dollars when the Montana Constitution and Montana statutes are abundantly clear about these requirements. Appropriate public notice and comment is a constitutional right of Montanans to which my administration adheres. Senate Bill 460 suggests otherwise, and I oppose that aspect of it, as well..

Notwithstanding my objections to particular provisions of Senate Bill 460, as stated above, I anticipate that existing legislative committees, with their existing resources, will conduct much of the work assigned under the bill to be performed by the Commission. For example, I expect the legislative branch will watch to ensure legislative intent in funding projects is being followed, projects are being coordinated, and waste and duplication is avoided. I commit to you that within the framework established by the Montana Constitution and existing laws, my administration will work with the legislative branch as these federal dollars are spent to ensure that the Legislature has the information it needs to perform its duties under the law.

I ask for your support in sustaining my veto of Senate Bill 460.

Sincerely,

BRIAN SCHWEITZER
GOVERNOR

April 29, 2009

The Honorable Linda McCulloch
Secretary of State
State Capitol
Helena, MT 59620

Dear Secretary McCulloch:

In accordance with the power vested in me as Governor by the Constitution and the laws of the State of Montana, I hereby veto House Bill 575, "**AN ACT PROVIDING THAT WATER PRODUCED IN ASSOCIATION WITH COAL BED METHANE PRODUCTION MAY BE USED FOR CERTAIN PURPOSES; ALLOWING A TEMPORARY PERMIT FOR THE BENEFICIAL USE OF WATER FROM COAL BED METHANE PRODUCTION; INCREASING COMPENSATION FROM THE COAL BED METHANE PROTECTION PROGRAM; ASSESSING A FEE; REQUIRING A STUDY OF ISSUES RELATED TO WATER IN ASSOCIATION WITH OIL AND GAS PRODUCTION; AMENDING SECTIONS 15-36-331, 76-15-904, 76-15-905, AND 82-11-175, MCA; REPEALING SECTION 10, CHAPTER 531, LAWS OF 2001; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.**"

I have vetoed House Bill 575 because I believe the bill reverses longstanding principles of Western and Montana water law by allowing the issuance of a permit for the use of water associated with coal bed methane ("CBM") production without providing protection to senior water rights holders, other than some limited compensation under a government program. Some of the water rights in jeopardy date back to the late 1800s. Reliance on this water has served as the basis of a stable agricultural economy in southeast Montana for generations. Montanans want energy development, but they also want to ensure that their agricultural neighbors are able to continue their successful operations well into the future without compromise of their established rights.

House Bill 575 was written in response to recent court decisions, but the "solution" devised in the bill is contrary to those decisions. With a sleight of hand, House Bill 575 classifies CBM groundwater as surface water, thereby circumventing the requirements of Montana's Water Use Act, Montana's cornerstone for protection of senior water rights. Ultimately, the bill fails to reconcile the substantive conflict between the extraction of water in the CBM process and senior water rights.

We must do better. Montana needs to take a new approach to devising a strategy that protects senior water rights holders, reduces discharges of untreated water into our surface waters, and allows responsible CBM development. CBM producers, like all other users of water, need to show that existing water rights are not being adversely affected, or they must devise long-term mitigation plans that will provide replacement water now and into the future, after CBM production ceases.

I pledge that over the coming interim, my administration will work with lawmakers and stakeholders to try to reach an agreement as to legislation that accomplishes these objectives.

Sincerely,

BRIAN SCHWEITZER
GOVERNOR

April 29, 2009

The Honorable Linda McCulloch
Secretary of State
State Capitol
Helena, MT 59620

Dear Secretary McCulloch:

In accordance with the power vested in me as Governor by the Constitution and the laws of the State of Montana, I hereby veto House Bill 629, "**AN ACT PROVIDING THAT ANY SCHOOL TRUST LAND INTEREST AND INCOME IN EXCESS OF $1 MILLION MUST BE DEPOSITED IN THE SCHOOL FLEXIBILITY ACCOUNT; PROVIDING A STATUTORY APPROPRIATION; AMENDING SECTIONS 17-7-502, 20-9-342, AND 20-9-542, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.**"

Pursuant to a trigger mechanism tied to the legislature's revenue estimate, House Bill 629 diverts money that otherwise would be deposited in the guarantee account (codified at § 20-9-342, MCA) for distribution to school districts through state equalization aid, and instead directs the deposit of that money in the school flexibility account (codified at § 20-9-542, MCA), outside the state's funding formula for K-12 public schools, which could be used by school districts for broad miscellaneous purposes.

While I understand that schools may welcome the potential distribution of money under House Bill 629, my objection is that the redistribution of funds provided for in the bill is contrary to virtually all the deliberate and targeted actions supported by my Administration and taken by the Legislature to rectify the deficiencies in Montana's school funding formula identified by the Montana Supreme Court in *Columbia Falls Elementary School District No. 6 v. State of Montana*, 2005 MT 69. Although the legal challenge has been resolved, our responsibility to adhere to the constitutional requirement that the legislature provide "a basic system of free quality public elementary and secondary schools" remains. Mont. Constit. Article X, section 1(3); § 20-9-309, MCA.

Montana's guarantee account is a cornerstone of Montana's school funding formula. By statute, it "is intended to: (a) stabilize the long-term growth of the permanent fund [the public school fund provided for in Article X, section 2 of the Montana Constitution]; and (b) maintain a constant and increasing distributable revenue stream [to school districts]." § 20-9-342(1), MCA. I believe the diversion of potentially significant amounts of interest and income from the guarantee fund to the flex fund is a significant setback to the work we have accomplished in the last four years to establish a school funding formula that was upheld by a state district court and is a shortsighted investment of money in ways not tied to Montana's school funding formula.

I ask that you sustain my veto of House Bill 629 for the important legal, policy, and fiscal reasons stated above.

Sincerely,

BRIAN SCHWEITZER
GOVERNOR

May 4, 2009

Senator Bob Story, President
Montana Senate
Capitol Building
Helena, Montana 59601

Representative Bob Bergren, Speaker
Montana House of Representatives
Capitol Building
Helena, Montana 59601

Dear President Story and Speaker Bergren:

The following bills were returned, without signature, to the Secretary of State, today, Monday, May 4, 2009.

HB 173 - Hendrick
HB 418 - Butcher
HB 459 - Grinde
HB 464 - O'Hara
HB 657 - Stahl
HB 659 - Roberts
HB 670 - Vincent
SB 158 - Barkus
SB 300 - Steinbeisser
SB 396 - Story

Sincerely,

BRIAN SCHWEITZER
Governor

April 24, 2009

The Honorable Robert Story
President of the Senate
State Capitol
Helena, Montana 59620

Dear Senator Story:

Please be informed that I have signed **Senate Bill 8** sponsored by Senator Hansen, **Senate Bill 18** sponsored by Senator Wanzenried, **Senate Bill 38** sponsored by Senator Curtiss, **Senate Bill 48** sponsored by Senator Essmann, **Senate Bill 55** sponsored by Senator Steinbeisser, **Senate Bill 73** sponsored by Senator Hawks, **Senate Bill 79** sponsored by Senator Juneau, **Senate Bill 86** sponsored by Senator J. Tropila, **Senate Bill 97** sponsored by Senator Wanzenried, **Senate Bill 108** sponsored by Senator Jent, **Senate Bill 131** sponsored by Senator Williams, **Senate Bill 176** sponsored by Senator Perry, **Senate Bill 198** sponsored by Senator Lewis et al., **Senate Bill 204** sponsored by Senator Moss et al., **Senate Bill 214** sponsored by Senator Steinbeisser et al., **Senate Bill 231** sponsored by Senator Laible, **Senate Bill 234** sponsored by Senator Gillan et al., **Senate Bill 260** sponsored by Senator Gillan et al., **Senate Bill 264** sponsored by Senator Brueggeman, **Senate Bill 271** sponsored by Senator Squires et al., **Senate Bill 281** sponsored by Senator Shockley et al., **Senate Bill 303** sponsored by Senator Wanzenried, **Senate Bill 305** sponsored by Senator Tutvedt et al., **Senate Bill 310** sponsored by Senator Shockley et al., **Senate Bill 350** sponsored by Senator Gillan, **Senate Bill 356** sponsored by Senator Zinke, **Senate Bill 369** sponsored by Senator Esp, **Senate Bill 404** sponsored by Senator Brueggeman et al., **Senate Bill 427** sponsored by Senator Laslovich, **Senate Bill 430** sponsored by Senator Hamlett et al., **Senate Bill 442** sponsored by Senator Laslovich, **Senate Bill 451** sponsored by Senator Wanzenried et al., **Senate Bill 457** sponsored by Senator Branae, **Senate Bill 462** sponsored by Senator Steinbeisser,

Senate Bill 464 sponsored by Senator Laslovich et al., **Senate Bill 467** sponsored by Senator Balyeat, **Senate Bill 491** sponsored by Senator Lewis, **Senate Bill 508** sponsored by Senator Brueggeman et al., and **Senate Bill 511** sponsored by Senator M. Tropila on April 24, 2009.

Sincerely,

BRIAN SCHWEITZER
Governor

May 5, 2009

The Honorable Linda McCulloch
Secretary of State
State Capitol
Helena, MT 59620

Dear Secretary McCulloch:

In accordance with the power vested in me as Governor by the Constitution and the laws of the State of Montana, I hereby veto Senate Bill 371, "**AN ACT REVISING THE DEFINITION OF "EMPLOYEE" OR "WORKER" WITH RESPECT TO WORKERS' COMPENSATION LAWS; CLARIFYING INJURIES THAT MAY NOT BE CONSIDERED AS ARISING OUT OF AND IN THE COURSE OF EMPLOYMENT; AMENDING SECTIONS 39-71-118 AND 39-71-407, MCA; AND PROVIDING AN EFFECTIVE DATE.**"

Senate Bill 371 establishes a statutory definition for certain injuries that do not arise out of and in the course and scope of employment for purposes of workers' compensation coverage. The definition focuses on injuries that have occurred during breaks and employment-related social events. Presently, in Montana, the determination of whether an employee's injury arises out of and in the course and scope of employment is not codified but is determined based on a four-part test that is derived from well-established common law principles in the area of workers' compensation law. Under the four-part test, coverage is determined based on whether the activity was undertaken at the employer's request, whether the employer compelled the employee's attendance at the activity, whether the employer controlled or participated in the activity, and whether the employer and employee mutually benefitted from the activity. *See, e.g., Courser v. Darby School Dist.*, 214 Mont. 13, 16-17, 692 P.2d 417, 419 (1984). The Montana Supreme Court has repeatedly affirmed that no one factor is determinative in the analysis. Rather, the determination of whether an injury arose during the course and scope of the employment must be based on the "totality of the circumstances."

To my understanding, Senate Bill 371 was introduced primarily in response to two decisions by the Montana Supreme Court, involving unusual fact patterns, that were objected to by workers' compensation insurers. Based on the opinion of representatives I consulted from the Montana Department of Labor and Industry, I proposed an amendatory veto of the bill to affirm that the bill was consistent with generally recognized principles in workers' compensation law. The Legislature rejected my amendments, thereby raising questions as to the bill's intent and effect. In fact, I have heard varying and diverse opinions expressed as to whether the outcome of the two decisions objected to by the insurers would be altered by passage of the legislation. With the above history in mind, I have vetoed this bill because I do not believe it would be helpful – for either workers or employers – to reverse well-settled law and legal principles in Montana regarding workers' compensation coverage. For workers, a change in the law would create uncertainty, possible denial of coverage, and unnecessary litigation until the new definitions were interpreted by the courts. For employers, too, a change in the law would result in uncertainty. Additionally, absent workers' compensation coverage, employers would face the possible greater liability exposure under tort theories of recovery. From the discussions among legislators, alone, one thing is clear: there is not unanimity of opinion as to the effects of this legislation.

Last summer, the Labor-Management Advisory Council on Workers' Compensation within the Department of Labor and Industry, chaired by Lieutenant Governor John Bohlinger, considered the advisability of legislation to address the matters covered by Senate Bill 371. The Advisory Council, containing equal representation from labor and management, did not reach agreement on legislation. In fact, the Advisory Council's conclusions reflected the same concerns with the legislation as those I expressed above, namely that coverage issues are fact-specific, Montana's case law is consistent with the case law from other states, and the effect of the court decisions and legislation – in terms of costs and impacts to workers – were unknown. The recommendations of this Advisory Council are persuasive in my decision to veto the bill, as well.

Finally, I mention that the Legislature passed Senate Joint Resolution 30, requesting an interim study to examine, among other things, the premium cost drivers to workers' compensation insurance in Montana, as compared to other Western states with similar industries. Assuming this issue will be studied by the Legislature, my administration looks forward to working with the interim committee to continue to look at not only the narrow issues raised in this bill but, more importantly, the larger picture as to how workers' compensation costs can be kept down in Montana.

For the reasons expressed above, I ask for your support to sustain my veto of Senate Bill 371.

Sincerely,

BRIAN SCHWEITZER
GOVERNOR

May 4, 2009

The Honorable Robert Story
President of the Senate
State Capitol
Helena, Montana 59620

Dear Senator Story:

Please be informed that I have signed **Senate Bill 117** sponsored by Senator Wanzenried, **Senate Bill 164** sponsored by Senator Debby Barrett, **Senate Bill 268** sponsored by Senator R. Brown, **Senate Bill 343** sponsored by Senator Jackson, **Senate Bill 399** sponsored by Senator Laslovich, **Senate Bill 475** sponsored by Senator Esp, and **Senate Bill 509** sponsored by Senator Gebhardt on May 4, 2009.

In addition, the following bills were returned to the Secretary of State without signature: **Senate Bill 100** sponsored by Senator Black, **Senate Bill 158** sponsored by Senator Barkus, **Senate Bill 300** sponsored by Senator Steinbeisser, **Senate Bill 396** sponsored by Senator Story, and **Senate Bill 425** sponsored by Senator Bales.

Sincerely,

BRIAN SCHWEITZER
GOVERNOR

May 5, 2009

The Honorable Robert Story
President of the Senate
State Capitol

Helena, Montana 59620

Dear Senator Story:

Please be informed that I have signed **Senate Bill 119** sponsored by Senator Esp, **Senate Bill 235** sponsored by Senator Murphy et al., **Senate Bill 290** sponsored by Senator Jackson et al., **Senate Bill 400** sponsored by Senator Laslovich, and **Senate Bill 446** sponsored by Senator Story et al. on May 5, 2009.

Sincerely,

BRIAN SCHWEITZER
Governor

May 6, 2009

The Honorable Robert Story
President of the Senate
State Capitol
Helena, Montana 59620

Dear Senator Story:

Please be informed that I have signed **Senate Bill 65** sponsored by Senator Hawks, **Senate Bill 171** sponsored by Senator Barkus, **Senate Bill 263** sponsored by Senator Shockley, **Senate Bill 322** sponsored by Senator Curtiss, **Senate Bill 360** sponsored by Senator Keane, **Senate Bill 418** sponsored by Senator Branae, **Senate Bill 439** sponsored by Senator Story, **Senate Bill 465** sponsored by Senator Hamlett, **Senate Bill 476** sponsored by Senator Shockley, **Senate Bill 498** sponsored by Senator Bales, **Senate Bill 507** sponsored by Senator Story, and **Senate Bill 510** sponsored by Senator Gebhardt on May 6, 2009.

Sincerely,

BRIAN SCHWEITZER
Governor

MARILYN MILLER
Secretary of the Senate

ROBERT STORY
President of the Senate

May 8, 2009

The Honorable Linda McCulloch
Secretary of State
State Capitol
Helena, MT 59620

Dear Secretary McCulloch:

In accordance with the power vested in me as Governor by the Constitution and the laws of the State of Montana, I hereby veto Senate Bill 503, "**AN ACT PROVIDING FOR MONTANA ECONOMIC STIMULUS; PROVIDING A 5 PERCENT CAPITAL GAINS CREDIT FOR THE SALE OF A MONTANA BUSINESS THAT WAS ESTABLISHED DURING A CERTAIN TIME PERIOD AND THAT HAS BEEN IN OPERATION FOR OR**

HAS EMPLOYED A CERTAIN PERCENTAGE OF MONTANA EMPLOYEES FOR AT LEAST 10 YEARS; PROVIDING THAT 50 PERCENT OF ANY BONUS DEPRECIATION RECAPTURED UNDER FEDERAL TAX LAW ORIGINALLY TAKEN FOR ECONOMIC RECOVERY IS DEDUCTIBLE FOR INDIVIDUAL INCOME TAX AND CORPORATE LICENSE TAX PURPOSES; PROVIDING THAT TO QUALIFY THE SUBJECT PROPERTY OF THE RECAPTURE MUST HAVE BEEN FABRICATED OR ASSEMBLED IN MONTANA AND SOLD DURING SPECIFIED TIMES; PROVIDING FOR A CAPITAL GAINS TAX FOR SALE OF CERTAIN TANGIBLE AND INTANGIBLE MONTANA BUSINESS PROPERTY OR QUALIFYING STOCK OF A MONTANA BUSINESS; PROVIDING THAT THE PROPERTY MUST HAVE BEEN HELD FOR AT LEAST 5 YEARS; PROVIDING THAT THE RATE FOR DETERMINING THE CREDIT INCREASES FROM 2 PERCENT TO 5 PERCENT OVER A 20-YEAR PERIOD; AMENDING SECTIONS 15-30-121, 15-30-183, AND 15-31-114, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

Senate Bill 503 creates new income tax credits and deductions offsetting capital gains in Montana. Ironically, people who have already made past investments without the credit would receive a windfall on their taxes of more than $300,000 per year, while new investment in Montana would not derive tax benefits until 2019. This is not exactly a "shovel ready" stimulus to Montana's economy. Even then, the prospects for future benefits from this bill are bleak. A respected national economic study by Moody's Economy.com indicates that capital gains incentives yield only 38 cents of economic benefit for every tax dollar spent – resulting in a negative return, or an ongoing loss, for taxpayers. In short, the bill spends $300,000 a year on a tax windfall for past investment, another $80,000 a year on administrative costs, and 62 cents of every Montana tax dollar used for future subsidies. Despite its fetching title, I do not believe Senate Bill 503 would create real economic stimulus for Montana nor do I believe it represents good public policy.

I am also concerned that out-of-state corporations will litigate on constitutional Commerce Clause grounds to overturn the local Montana investment restrictions in the bill and claim incentives for investments they make anywhere in the world. This risk creates the prospect of an even greater waste of dollars to the extent Montana taxpayers will be asked to subsidize investments made by corporations in other states or nations.

Senate Bill 503 violates guidelines that I laid down from the start of the session to ensure that the state budget was balanced, needed reserves were maintained, and expenditures were balanced by revenues. The bill does not meet these objectives, and I conclude it is not a wise investment for Montana taxpayers.

For these combined reasons, I have vetoed Senate Bill 503.

Sincerely,

BRIAN SCHWEITZER
GOVERNOR

May 8, 2009

The Honorable Linda McCulloch
Secretary of State
State Capitol
Helena, MT 59620

Dear Secretary McCulloch:

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In accordance with the power vested in me as Governor by the Constitution and the laws of the State of Montana, I hereby veto Senate Bill 403, "**AN ACT INCREASING THE TIME THE PUBLIC SERVICE COMMISSION HAS TO ACT ON A PETITION FROM A UTILITY OR QUALIFYING SMALL POWER PRODUCTION FACILITY; ALLOWING ELECTRICITY FROM AN ELIGIBLE RENEWABLE RESOURCE PURCHASED BY A PUBLIC UTILITY FROM A QUALIFYING SMALL POWER PRODUCTION FACILITY TO BE USED TO OFFSET REQUIREMENTS OF THE RENEWABLE RESOURCE STANDARD; AMENDING SECTIONS 69-3-603 AND 69-3-2004, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, AN APPLICABILITY DATE, AND A CONTINGENT TERMINATION DATE.**"

Senate Bill 403 establishes a relationship between renewable energy credits (RECs) from electrical generation at qualifying facilities and Montana's renewable energy portfolio standard. While there may be rate and public policy issues to be clarified about the transfer of RECs from qualifying facilities built in the future, the approach used in Senate Bill 403 threatens the integrity of Montana's renewable portfolio standard with a questionable accounting device and dampens the prospects for construction of new renewable energy projects in the state.

Senate Bill 403 would reduce Montana's official renewable portfolio standard by an amount that varies year to year based on the amount of electricity generated by renewable qualifying facilities. The bill would allow a utility to use the output from qualifying facilities to meet current goals for renewable energy generation without requiring the utility to actually purchase the RECs from those facilities. The bill's proponents testified that Montana qualifying facilities would still have RECs to sell elsewhere. They deny that the bill would circumvent prohibitions against using the same REC twice. I disagree.

I have grave concerns that the double-counting sanctioned under Senate Bill 403 will not be acceptable to the voluntary or compliance markets for RECs, which hurts the value of renewable energy in Montana. Green-e Energy, which certifies the validity of RECs purchased voluntarily by individuals, already has informed my energy advisor that, were Senate Bill 403 to become law, it would no longer be able to certify sales of Montana qualifying facility RECs. The Western Renewable Energy Generation Information System (WREGIS), which certifies RECs for use in state-mandated compliance markets, such as Montana's, will not rule on the validity of a REC until it is formally submitted. However WREGIS has repeatedly emphasized that, as a general principle, it cannot and will not permit double-counting of RECs. The opinions expressed by the bill's proponents that this legislation would allow qualifying facilities to sell renewable energy to utilities and simultaneously allow the facilities to also sell their RECs elsewhere are clearly not opinions that are universally held.

Proponents of Senate Bill 403 have acknowledged there could be legal challenges to the bill, should it be signed into law, though they claim to be confident in the outcome. To the extent the State of Montana is drawn into the litigation, I have the added concern that Montana taxpayers would have to pay to defend these challenges.

To summarize, Senate Bill 403, if allowed to become law, would undermine the value of renewable energy generated in Montana, lower Montana's renewable portfolio standard, risk a determination that Montana's RECs do not comply with regional standards, and could result in litigation. Senate Bill 403 does not move construction of new renewable energy forward in Montana, and for these reasons, I have chosen to veto it.

I ask for your support in sustaining my veto.

Sincerely,

BRIAN SCHWEITZER
GOVERNOR

May 8, 2009

The Honorable Linda McCulloch
Secretary of State
State Capitol
Helena, MT 59620

Dear Secretary McCulloch:

In accordance with the power vested in me as Governor by the Constitution and the laws of the State of Montana, I hereby veto Senate Bill 257, "**AN ACT REVISING THE DEFINITION OF "ELIGIBLE RENEWABLE RESOURCE" TO INCLUDE UPGRADES TO A HYDROELECTRIC FACILITY; REQUIRING CERTAIN RENEWABLE ENERGY CREDITS BE TRANSFERRED TO THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; REQUIRING A PORTION OF THE VALUE OF THE RENEWABLE ENERGY CREDITS ASSOCIATED WITH THE UPGRADE TO BE DEPOSITED IN THE UNIVERSAL LOW-INCOME ENERGY ASSISTANCE FUND; AMENDING SECTIONS 69-3-2003, 69-3-2004, AND 90-3-1003, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.**"

Senate Bill 257 purports simply to expand the definition of resources eligible to meet the requirements of renewable energy standards in Montana and elsewhere by adding a new category – upgrades to existing hydroelectric plants. (Under current law, hydro projects that are less than 10 megawatts, requiring no new impoundments, already are eligible renewable resources.) On its face, this would be a commendable goal, as Montana welcomes clean energy and the jobs that come from building clean energy projects. However, facts claimed by the proponents to support the bill do not bear up under examination. Because I believe Senate Bill 257 would subvert Montana's Renewable Portfolio Standard (RPS), actually discouraging the development of new renewable energy projects, I have chosen to veto the bill.

My first objection is that the definition of "renewable energy credits" (RECs) contained in the bill is based on a fictionalized scenario. The bill defines RECs based on an assumption that energy output at all times is generated first by capacity attributable to the upgrade to the existing hydroelectric facility up to the full amount of that capacity. Dams do not typically run at full capacity. This is even more the case with the incremental generating capacity added to an existing plant. However, Senate Bill 257 would have us believe that this new capacity – capacity which will run least often – produces RECs 24 hours per day, 365 days per year. This does not accord with reality.

My second objection is in the claim that Senate Bill 257 is necessary so RECs from hydroelectric upgrades can be sold in other states. Other states make their own decisions regarding RECs and would no sooner let Montana dictate what is an eligible REC for their RPS than Montana would let them dictate to us. The Western Renewable Energy Generation Information System (WREGIS), which oversees the market for RECs in the West, confirms this.

Third, I believe that the claim that a vast market exists in Montana for RECs from hydro upgrades is disingenuous. The Diamond Willow wind farm will serve all of Montana-Dakota Utilities' requirements under the current RPS. The Judith Gap wind farm will allow NorthWestern Energy to meet all of its requirements into the year 2015. This means the current market demand in Montana is approximately 5,000 RECs per year, a number that doubles in 2010. Even if we were to *assume* that NorthWestern Energy will not build a renewable energy facility (which assumption I believe is unlikely), there will be a statewide market for only approximately 260,000 RECs beginning in 2016. Comparing these numbers to the over 300,000 newly eligible RECs under Senate Bill 257 produced by upgrades *already built or committed to*, it becomes obvious that the value of all RECs would be lowered in this already limited market and would not result in the demand proponents suggest would occur.

Fourth, I am cognizant of the fact that these 300,000+ newly eligible RECs will come from upgrades at Kerr Dam (already completed) and Rainbow Dam (already committed to with or without this legislation). Under Senate Bill 257, incentives for additional investments under Montana's RPS law would be obliterated. Depending on the types of projects, my staff estimates that under current law, *without Senate Bill 257*, up to $200 million dollars in new renewable investments would occur by 2015 to meet Montana's RPS. Senate Bill 257 thus negates the intent of Montana's RPS by discouraging development of bona fide new renewable energy projects, which would mean fewer jobs for Montanans and less revenue for local government.

Finally, I note that after Senate Bill 257 passed the legislature, it took two weeks to reach my desk. While I do not speculate on the reasons for this delay, the result is that I was unable to propose amendments to the bill that could have resulted in legislation to actually encourage new investment in Montana.

For these combined reasons, I have chosen to veto Senate Bill 257.

Sincerely,

BRIAN SCHWEITZER
GOVERNOR

May 11, 2009

The Honorable Linda McCulloch
Secretary of State
State Capitol
Helena, MT 59620

Dear Secretary McCulloch:

The constitutional ten day period for my consideration of Senate Bill 489 has now passed, and the bill has become law without my signature. Senate Bill 489 recovers a portion of the traditional tax base of local governments and schools that was removed as a result of the Montana Supreme Court decision in the case of *Omimex v. State*, 2008 MT 403. Because I have some serious concerns with both the content of Senate Bill 489, and the manner in which it reached my desk, I am delivering it to you accompanied by this formal message.

My objection to Senate Bill 489, as passed by the 61st Legislature, is that while it restores the majority of the traditional tax base to local governments and schools that existed prior to *Omimex*, I do not believe that the approach adopted in the legislation reflects sound tax policy. Most problematic is that, as fashioned with its fine-tuned definitions, the bill would allow companies to manipulate their ownership interests in gas lines to avoid the payment of taxes. Also troubling is that the concept of "regulation" has for the first time been added to the inquiry of whether a pipeline is centrally assessed – which is particularly troubling in these post-deregulation years.

Equally troubling is that, although the bill resolves a significant portion of the fiscal problems that resulted from the *Omimex* decision, there nonetheless remains a high degree of uncertainty as to the effect of the bill's provisions. This uncertainty was highlighted by the testimony of at least one county official testifying in favor of the bill, who based his support on the premise that a particular company would be centrally assessed. However, during the same hearing a representative of the very company referred to by the county official testified as a proponent of the bill *based on the exact opposite premise*, claiming that the company would *not* be centrally assessed.

Other legislative testimony on Senate Bill 489 demonstrated uncertainty as to whether, under the bill's definitions, three of the largest integrated natural gas companies in Montana would be centrally assessed and classified as class

9 properties, or locally assessed and classified as class 8 properties, making the prospect of litigation as to the determination highly probable. The uncertainties as to the classification of these oil and natural gas transport pipelines and affiliated properties should have been avoided.

This leads me to my objection regarding the manner in which Senate Bill 489 reached my desk. Like some other bills winding their way through the 61st Legislature, there was a delay in the delivery of this bill to me following its passage by both houses. This delay impeded my constitutional authority under Article VI, section 10 of the Montana Constitution to issue an amendatory veto of the bill for the Legislature's consideration. In fact, had the bill been delivered to me in a timely manner, I had planned to propose amendments that would have addressed the uncertainties and ambiguities existing in the legislation. Because of the delay in its delivery, and because I could not offer amendments to remedy the bill's problems, I anticipate uncertainty for Montana's local governments and school districts, and litigation that could have been avoided.

I also note that House Bill 657, which passed the Legislature and became law, directs the Revenue and Transportation Interim Committee to study the issues surrounding taxation of oil and natural gas property sought to be addressed in Senate Bill 489. I am concerned that the litigation risks posed by Senate Bill 489, at best, will limit and, at worst, prevent, the successful completion of the study, as occurred during the 2005-2006 interim when the *Omimex* case was in court.

Montana can ill afford the adverse effects on local governments and school districts that would occur without Senate Bill 489. Therefore, as stated at the outset, despite the problems it creates, on balance, I decided to let the bill become law without my signature. I anticipate work remains for the next legislature to remedy the bill's problems.

Sincerely,

BRIAN SCHWEITZER
GOVERNOR